

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

MAUDER and ALICE CHAO;  
DEOGENESO and GLORINA PALUGOD;  
And MARITZA PINEL, individually and  
on behalf all others similarly situated,

Plaintiffs,

v.

AURORA LOAN SERVICES, LLC,  
Defendant.

Case No: C 10-3118 SBA

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT  
AND MOTION FOR ATTORNEYS'  
FEES AND SERVICE AWARDS**

Dkt. 230, 241, 250

This matter came before the Court on January 14, 2015, for a fairness hearing in connection with Plaintiffs' Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees and Service Awards. In particular, Plaintiffs seek final approval of: a proposed class action settlement in the gross amount of \$5,250,000; an award of attorney's fees in the amount of \$1,575,000 (based on 30% of the gross settlement); incentive awards for each named plaintiff in the amount of \$7,500; Claims Administrator fees and expenses not to exceed \$85,000; and litigation costs in the amount of \$185,883. The Court has received no objections to the proposed settlement and no putative objectors appeared at the final approval hearing.<sup>1</sup>

The Court may finally approve a class settlement "only after a hearing and on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); Officers for Justice v. Civil Serv. Comm'n of the City and County of San Francisco, 688 F.2d 615, 625 (9th Cir. 1982). To assess whether a proposed settlement comports with Rule 23(e), a

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<sup>1</sup> The parties appeared through their respective counsel of record.

1 district court “may consider some or all” of the following factors: (1) the strength of  
2 plaintiffs’ case; (2) the risk, expense, complexity, and likely duration of further litigation;  
3 (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in  
4 settlement; (5) the extent of discovery completed, and the stage of the proceedings; (6) the  
5 experience and views of counsel; (7) the presence of a governmental participant; and (8) the  
6 reaction of the class members to the proposed settlement. Rodriguez v. West Publ’g Corp.,  
7 563 F.3d 948, 963 (9th Cir. 2009). No single factor is the “most significant.” Officers for  
8 Justice, 688 F.2d at 625.

9         The Court finds that Plaintiffs have sufficiently demonstrated that the above factors  
10 militate in favor of approving the settlement. First, although Plaintiffs have made a prima  
11 facie showing to support their claims, it would be risky and costly for them to continue  
12 pursuing the action. Not only are the salient issues both factually and legally complex,  
13 Defendant has actively and vigorously defended itself against Plaintiffs’ claims throughout  
14 the litigation. In addition, aside from the preliminary approval order, there has been no  
15 class certification order issued in this case. Second, Plaintiffs agreed to the settlement only  
16 after conducting extensive discovery, thus demonstrating that their decision to settle is an  
17 informed one. Finally, the Class has reacted favorably to the settlement, with no objections  
18 having been filed and only 22 out of approximately 15,000 class members having opted  
19 out.

20         With regard to the attorneys’ fees request, the Court finds that Plaintiffs have made a  
21 sufficient showing to warrant an upward departure from the 25% benchmark generally  
22 applicable in common fund cases. Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1047 (9th  
23 Cir. 2002) (listing factors to consider in arriving at a fee award). Over the course of several  
24 years, Plaintiffs’ counsel vigorously litigated the action before securing a settlement  
25 favorable to the class. The reasonableness of a 30% fee award is confirmed by the lodestar  
26 cross-check. See Vizcaino, 290 F.3d at 1050. Plaintiffs have likewise made a sufficient  
27 showing that class representatives Mauder Chao, Alice Chao, Deogeneso Palugod, Glorina  
28 Palugod, and Maritza Pinel have contributed to the successful prosecution of the action and

1 protected the interests of the Class. Staton v. Boeing Co., 327 F.3d 928, 977 (9th Cir.  
2 2003) (articulating factors to consider in assessing a request for an incentive award in class  
3 actions). Finally, Plaintiffs have provided sufficient documentary support for the payment  
4 of Claims Administrator fees and litigation expenses in the sums requested. Accordingly,

5 For the reasons stated above,

6 IT IS HEREBY ORDERED THAT Plaintiffs' Motion for Final Approval of Class  
7 Action Settlement and Motion for Attorneys' Fees and Service Awards are GRANTED.

8 1. This Order incorporates and approves the Settlement Agreement as fair,  
9 reasonable and adequate in all respects, and the terms used herein shall have the same  
10 meaning as set forth in the Settlement Agreement.

11 2. This Court has jurisdiction over the subject matter of the Action and over all  
12 parties to this Action, including all Settlement Class Members, as such term is defined in  
13 the Settlement Agreement.

14 3. The Court appoints Plaintiffs Mauder and Alice Chao (husband and wife);  
15 Deogeneso and Glorina Palugod (husband and wife), and Maritza Pinel, as representatives  
16 of the Settlement Class.

17 4. The Court finds that the requirements of Rule 23 are satisfied with respect to  
18 the Settlement Class: (a) the members of the Settlement Class are so numerous that joinder  
19 of all of them is impracticable; (b) there are questions of law and fact common to the  
20 Settlement Class, which predominate; (c) Plaintiffs' claims are typical of the claims of the  
21 Settlement Class; and (d) Plaintiffs and Class Counsel have and will fairly and adequately  
22 represent the Settlement Class.

23 5. The Settlement Class is certified as the following Settlement Classes:

24 A. The "**Rosenthal Act Settlement Class**," which consists of "all  
25 California residential mortgage customers to whom Aurora sent the  
26 'Workout Agreement,' later called the 'Foreclosure Alternative  
27 Agreement,' or substantially identical correspondence on or after June  
28 8, 2009."

and

1           B.     The “**Restitution Settlement Class**,” which consists of “All California  
2           residential mortgage customers to whom Aurora sent the ‘Workout  
3           Agreement,’ later called the ‘Foreclosure Alternative Agreement,’ or  
4           substantively identical correspondence on or after June 8, 2006, who  
5           made the trial payments required by their final Workout Agreement, did  
6           not thereafter enter into a repayment plan or HAMP trial payment plan,  
7           were not thereafter offered a loan modification by Aurora, and were  
8           thereafter foreclosed upon.” Settlement Agreement, ¶ 2(bb) and (cc).

9           There is also the “Excess Payment Settlement Subclass” which contains: “All  
10          members of the Restitution Settlement Class who made additional payments to Aurora after  
11          the term of the Workout Agreement had expired.” Settlement Agreement, ¶ 2(n).

12          6.     The Class Notice mailed to Settlement Class Members fully and accurately  
13          informed Settlement Class Members of all material elements of the proposed settlement,  
14          and the mailing constituted valid, due, and sufficient notice to all Settlement Class  
15          Members, and the best notice practicable under the circumstances.

16          7.     The Court finds that the persons identified in Exhibit C to the Stipulation and  
17          [Proposed] Order Submitting Final Class Lists, filed January 20, 2015, made valid requests  
18          for exclusion from the Settlement Class pursuant to the Class Notice.

19          8.     The Court finds that the persons identified in Exhibit A to the Stipulation and  
20          [Proposed] Order Submitting Final Class Lists, filed January 20, 2015, are members of the  
21          Rosenthal Act Settlement Class.

22          9.     The Court finds that the persons identified in Exhibit B to the Stipulation and  
23          [Proposed] Order Submitting Final Class Lists, filed January 20, 2015, are members of the  
24          Restitution Settlement Class.

25          10.    The Court finds there are no objections to the settlement following the class  
26          notices.

27          11.    The Court approves incentive awards in the amount of \$7,500 to Plaintiff  
28          Mauder Chao, \$7,500 to Plaintiff Alice Chao, \$7,500 to Plaintiff Deogeneso Palugod,  
29          \$7,500 to Glorina Palugod, and \$7,500 to Plaintiff Maritza Pinel, for their services as class  
30          representatives in accordance with the Settlement Agreement. The Court finds that such

1 awards are fair, reasonable, and appropriate for the reasons stated above and at the fairness  
2 hearing.

3 12. Plaintiffs' attorneys (a) Hagens Berman Sobol Shapiro LLP, (b) the Law  
4 Office of Andrew Oldham, (c) Abtahi Thigpen, LLP and (d) Richardson, Patrick,  
5 Westbrook & Brickman, LLC are approved and appointed as Class Counsel.

6 13. Class Counsel are awarded attorneys' fees of 30% of the Gross Settlement  
7 Fund (\$1,575,000) plus expense reimbursements of \$185,833.00. The Court finds that such  
8 awards are fair and reasonable, and orders that they be paid from the Gross Settlement Fund  
9 in accordance with the Settlement Agreement. The attorneys' fees awarded by the Court  
10 shall be allocated to Class Counsel at their discretion.

11 14. The Court approves the Claims Administrator's fees and costs not to exceed  
12 \$85,000.00 to be paid promptly from the Gross Settlement Fund as they are incurred. All  
13 such funds not yet expended shall be held in reserve from the Gross Settlement Fund to  
14 cover the actual fees and costs the Claims Administrator will incur in mailing settlement  
15 payments. Should a second distribution be required per the terms of the Settlement  
16 Agreement, the fees and costs associated with such second distribution will be paid from  
17 the funds to be distributed in such second distribution. The Court finds that such fees and  
18 costs are reasonable and orders that they be paid from the Gross Settlement Fund in  
19 accordance with the Settlement Agreement.

20 15. The Court orders the parties to the Settlement Agreement and the Claims  
21 Administrator to perform their obligations thereunder pursuant to the terms of the  
22 Settlement Agreement and the plan of allocation of the Net Settlement Fund described  
23 therein.

24 16. The Court orders that Judgment be entered on the terms of the Settlement  
25 Agreement as set forth in this Order and Judgment and dismisses the complaint in this case  
26 and all claims and causes of action asserted therein, on the merits and with prejudice, as to  
27 the Class Representative and all Settlement Class Members. This dismissal is without cost  
28 to any party except as specifically provided in the Settlement Agreement.

1           17. The Court adjudges that the Class Representatives and all Settlement Class  
2 Members who did not request exclusion shall, to the extent provided by the Settlement  
3 Agreement, conclusively be deemed to have released and discharged Released Parties, as  
4 that term is used in the Settlement Agreement, from any and all Released Claims, as that  
5 term is defined in the Settlement Agreement.

6           18. Without affecting the finality of this Order and Judgment, the Court retains  
7 jurisdiction over: (a) implementation and enforcement of the Settlement Agreement  
8 pursuant to further orders of the Court, until such time as the final judgment contemplated  
9 hereby has become effective and each and every act agreed to be performed by the parties  
10 hereto shall have been performed pursuant to the Settlement Agreement, including all  
11 payments set forth thereunder; (b) any other action necessary to conclude this settlement  
12 and implement the Settlement Agreement; and (c) the enforcement, construction, and  
13 interpretation of the Settlement Agreement including, but not limited to, any dispute  
14 concerning Settlement Class Members' release of Released Claims. Any disputes relating  
15 to the foregoing shall be referred to a Magistrate Judge of this Court for resolution or a  
16 report and recommendation, depending on the circumstances presented.

17           19. The Court declines to identify a cy pres beneficiary at this time. If and when  
18 the Claims Administrator determines that there are unclaimed funds following the final  
19 distribution of the settlement, the parties shall submit a motion or stipulation which  
20 demonstrates that Habitat for Humanity or some other beneficiary is an appropriate cy pres  
21 beneficiary under the standard set forth in Dennis v. Kellogg Co., 697 F.3d 858 (9th Cir.  
22 2012).

23           20. The Court finds that no just reason exists for delay in entering this Judgment  
24 and the Clerk is hereby directed forthwith to enter it.

25           IT IS SO ORDERED.

26           Dated: January 21, 2015

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge